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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.2198 of 2023

K.Chindhanai Selvam

Petitioner

vs.

1.The Secretary to Government,
Commercial Taxes and Registration Department,
Government of Tamil Nadu,
Fort St. George, Chennai – 600 009.

2.The Inspector General of Registration,
100, Santhome High Road,
Chennai.

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to pass final orders on the departmental proceedings initiated against the Petitioner vide revised charge memo No.50605 /V3 / 2014 dated 18.12.2014(forwarded vide order dated 23.01.2015 by the 2nd respondent) within a time frame to be fixed by this Honble Court and Consequently direct the respondents to permit the Petitioners to retire from service with all pensionary benefits.

For Petitioner : Mr.V.Vijayashankar



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For Respondents : Mr.D.Ravichander
Special Government Pleader

ORDER

This writ petition has been filed for issue of writ of mandamus directing the respondents to pass final orders on the departmental proceedings initiated against the petitioner through Charge Memo dated 18.12.2014, within a time frame fixed by this Court.

2.Heard Mr.V.Vijayashankar, learned counsel appearing on behalf of the petitioner and Mr.D.Ravichander, learned Special Government Pleader appearing on behalf of the respondents.

3.The petitioner had already filed W.P.(MD)No.21224 of 2014 challenging the impugned Charge Memo dated 18.12.2014. The writ petition was taken up for final hearing by this Court and the following order was passed:

3.Annexure-II to the charge memo provides list of documents and the allegations set out in the charge memo are undoubtedly serious in nature, warranting a detailed enquiry.

Thus, there is no infirmity in the charge memo and the writ



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petitioner instead of participating in the process of enquiry to establish his innocence or otherwise, has chosen to file this Writ Petition, mainly on the ground that he was performing the duties and responsibilities, as a quasi judicial authority and therefore, no charge memo can be issued against him.

4.This Court as well the Hon'ble Apex Court repeatedly held that the quasi judicial authorities are also amenable to departmental disciplinary proceedings. Even while functioning as quasi judicial authority, if there is any dereliction, negligence, misconduct or financial loss are identified, the competent authorities are empowered to conduct an enquiry and cull out the truth, regarding the incident and thereafter, take a decision on merits and in accordance with law. There is no absolute exemption for the quasi judicial authorities from the departmental disciplinary proceedings. Thus, the ground raised that the writ petitioner was performing duties and responsibilities of quasi judicial authority, is of no avail to him

5.The writ petitioner was holding the responsible post in the cadre of District Registrar. Thus, he has to perform his duties and responsibilities with utmost care and devotion of duty. During the course of the performance, if any negligence, misconduct and financial loss are identified, then all suitable actions are to be initiated against him. The legal principles in this regard are settled by the Hon'ble Apex Court in many



decisions.

6. Under these circumstances, this Court is of the considered opinion that the present Writ Petition filed challenging the charge memo, cannot be entertained. The writ petitioner has to participate in the process of enquiry and establish his innocence or otherwise by producing document and adducing evidence, if required.

7. Therefore, this Court is of the opinion that there is no infirmity in the charge memorandum framed against the writ petitioner. A charge memo can be challenged on a limited ground and a judicial review against the charge memo is certainly limited. A charge memo can be challenged on limited grounds and the Court can entertain a writ petition on exceptional circumstances. A charge memo can be challenged, if the same was issued by an incompetent authority having no jurisdiction, an allegation of mala fides is raised if the same is in violation of statutory rules. Even in case of raising the allegation of mala fides, the authority against whom such an allegation is raised, has to be impleaded as a party respondent in the writ proceedings in his personal capacity. In the absence of any such legal grounds, no charge memo can be entertained by way of writ petition.

8. Intermittent intervention in the disciplinary



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proceedings is not preferable. However, only on exceptional circumstances, this Court can issue a direction against the proceedings and not in a routine manner. Mere issuance of a call letter to the writ petitioner, directing him to participate in the domestic enquiry will not give any cause of action to move this writ petition under Article 226 of the Constitution of India. Thus, the writ petition is absolutely misconceived and the grounds raised in this writ petition cannot be considered.

*9. The Honourable Supreme Court of India in Paragraph No.6 of the case of **Union of India and others Vs. Upendra Singh**, reported in (1994) 3 SCC 357 has held that:-*

“..In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into



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the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Kamal v. Gopi Nath & Sons. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus : (SCC p. 317, para 8) "Judicial review, it is trite, is not directed against the decision but is confined to the decisionmaking process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."



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10. In the case of Secretary, Ministry of Defence and Others Vs. Prabhash Chandra Mirdha [(2012) 11 SCC 565], the Hon'ble Apex Court of India has held as follows:-

“10. Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction / competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the Court.

11. In State of Orissa V. Sangram Keshari Misra (SCC pp.315-16, para 10) this Court held that normally a charge-sheet is not quashed prior to the conducting of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that to determine correctness or truth of the charge is the function of the disciplinary authority.

12. Thus, the law on the issue can be summarised to the effect that the charge-sheet cannot generally be a



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subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings.”

11.In the case of Union of India vs. Kunishetty Satyanarayana [(2006) 12 SCC 28], it was held that:-

“13.It is well settled by a series of decisions of this Court that ordinarily no writ lies against a chargesheet or show-cause notice vide Executive Engineer, Bihar State Housing Board V. Ramesh Kumar Singh, Special Director V. Mohd. Ghulam Ghouse, Ulagappa V. Divisional Commr., Mysore, State of U.P. V. Brahm Datt Sharma, etc.

14.The reason why ordinarily a writ petition should not be entertained against a mere show-cause



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notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere chargesheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and / or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.”

12.The writ petitioner further states that he was functioning as the Sub-Registrar and exercised the power, which is quasi judicial in the nature. Therefore, the decisions taken in his capacity as a quasi judicial authority cannot be questioned nor disciplinary proceedings can be initiated. Such a concept, or idea mooted out by the writ petitioner cannot be accepted by this Court. The writ petitioner is a Government Officer and he is bound by the Rules and Regulations as well



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as the Service conditions. The writ petitioner being a Government Employee, the Government Servants Conduct Rules (Discipline and Appeal) are applicable to the writ petitioner. Large number of public servants are exercising the powers under various Acts and Rules enacted by the Parliament and State Legislature. While implementing the provisions of the Act or Rules, if they have committed any irregularities, illegalities or misconducts certainly they are liable for prosecution and for disciplinary proceedings. The Quasi Judicial Authority, while exercising the powers are expected to be prudent and complete devotion to duty. The public servants are expected to exercise their powers with utmost care and with integrity. If there is any misconduct, they are certainly liable for departmental disciplinary proceedings. The nature of misconducts are very well enumerated in the Government Servants Conduct Rules. Such being the concept, the Government Officials cannot plead that the order passed in their capacity as Quasi Judicial Authority are exempted from initiation of disciplinary proceedings. Such a plea made by the writ petitioner is unacceptable and the Government Employees cannot escape from the provisions of the Discipline and Appeal Rules. The other grounds raised in these writ petitions for quashing of the charge memo are neither candid nor convincing. This Court is not inclined to consider the case on merits and it is left open to the competent authorities to consider all the materials available on records and pass final



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orders in the disciplinary proceedings, as early as possible, without any further delay.

13. In respect of the charge against the quasi judicial orders, the Hon'ble Supreme Court of India held in the case of Union of India and others Vs. A.N.Saxena, reported in AIR 1992 SC 1233 and the relevant paragraph Nos.6 and 8 are extracted hereunder:

“6. In the first place, we cannot, but confess out astonishment at the impugned order passed by the tribunal. In a case like this the tribunal, we feel, should have been very careful before granting stay in a disciplinary proceeding at an interlocutory stage. The imputations made against the respondent were extremely serious and the facts alleged, if proved, would have established misconduct and misbehaviour. It is surprising that without even a counter being filed, at an interim stage, the tribunal without giving any reasons and without apparently considering whether the memorandum of charges deserved to be enquired into or not, granted a stay of disciplinary proceedings as it has done. If the disciplinary proceedings in such serious matters are stayed so lightly as the tribunal appears to have done, it would be extremely difficult to bring any wrong-doer to book. We have, therefore, no hesitation in



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setting aside the impugned order of the tribunal and we direct that the disciplinary proceedings against the respondent in terms of the charge-sheet dated March 13, 1989 shall be proceeded with according to law. In fact, we would suggest that disciplinary proceedings should be proceeded with as early as possible and with utmost zeal.

8. In our view, an argument that no disciplinary action can be taken in regard to actions taken or purported to be done in the course of judicial or quasi-judicial proceedings is not correct. It is true that when an officer is performing judicial or quasijudicial functions disciplinary proceedings regarding any of his actions in the course of such proceedings should be taken only after great caution and a close scrutiny of his actions and only if the circumstances so warrant. The initiation of such proceedings, it is true, is likely to shake the confidence of the public in the officer concerned and also if lightly taken likely to undermine his independence. Hence the need for extreme care and caution before initiation of disciplinary proceedings against an officer performing judicial or quasi-judicial functions in respect of his actions in the discharge or purported to discharge his functions. But it is not as if such action cannot be taken at all. Where the actions of such an officer indicate culpability, namely, a desire to



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oblige himself or unduly favour one of the parties or an improper motive there is no reason why disciplinary action should not be taken.”

14. In the case of Union of India and Others Vs. K.K.Dhawan, reported in (1993) 2 SCC 56, His Lordship Justice S.Mohan, while speaking on behalf of the Hon'ble Three Judges Bench of the Supreme Court of India held as under:

“22. The Tribunal has chosen to rely on Civil Appeal Nos. 4986- 87/90. The order in that case clearly shows the ultimate conclusion was that the charge framed against the delinquent officer had not been established. In support of that conclusion, it was observed as under "We are also of the view that the action taken by the appellant was quasi-judicial and should not have formed the basis of disciplinary action."

23. We do not think where to buttress the ultimate conclusion, this observation was made, that could ever be construed as laying down the law that in no case disciplinary action could be taken if it pertains to exercise of quasi-judicial powers.”

15. This dictum fully supports the stand of the appellant. There is a great reason and justice for holding in such cases



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that the disciplinary action could be taken. It is one of the cardinal principles of administration of justice that it must be free from bias of any kind.

16. In view of the facts and circumstances, the writ petitioner is at liberty to participate in the process of enquiry and establish his innocence or otherwise. The competent discipline authority must ensure that the departmental disciplinary proceedings initiated against the writ petitioner is concluded in all respects, within a reasonable period of time without causing any undue delay. Long pendency of the departmental disciplinary proceedings would also cause prejudice to the interest of the employee. In the present case, the writ petitioner had already attained the age of superannuation, therefore, early disposal of the disciplinary proceedings are certainly imminent.

17. Under these circumstances, the respondents are directed to proceed with the enquiry and conclude the same in all respects and pass final orders as expeditiously as possible. However, such early disposal is subject to the condition that the writ petitioner should also co-operate with the competent authority for the disposal of the enquiry proceedings. In the event of non cooperation on the part of the writ petitioner, the same shall be recorded in the proceedings itself.



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4.The grievance of the petitioner is that in spite of a specific direction given by this Court to complete the proceedings and pass final orders, as expeditiously as possible, there has been absolutely no progress for more than two years and hence, the present writ petition has been filed before this Court.

5.The learned counsel for the petitioner submitted that already the enquiry has been completed pursuant to the orders passed by this Court in 2019, October itself and what remains is the final order to be passed by the 2nd respondent.

6.In view of the above, there shall be a direction to the respondents to pass final orders in the pending disciplinary proceedings, within a period of three months from the date of receipt of copy of this order. It is made clear that the petitioner will co-operate for the completion of the proceedings, within the time limit fixed by this Court without adopting any dilatory tactics. If the final order is not passed within three months as fixed by this Court, the entire disciplinary proceedings against the petitioner will stand lapsed and thereafter, the petitioner will be entitled for all the consequential

benefits.



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7.This writ petition is disposed of with the above direction. No Costs.

27.01.2023
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Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

1. The Secretary to Government,
Commercial Taxes and Registration Department,
Government of Tamil Nadu,
Fort St. George, Chennai – 600 009.
2. The Inspector General of Registration,
100, Santhome High Road,
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N. ANAND VENKATESH, J.

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